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THE MODERN LAW SCHOOL IN ENGLAND AND AMERICA.

THE phrase "a modern law school" is perhaps misleading. To the American layman at least it may suggest that schools teaching our native system of law, the common law of England and America, are to be found not only in our present but in our past—in the past of the mother country if not among the beginnings of America. But it is a fact of consequence in the history of our jurisprudence, that with possibly one exception the modern law school is our only law school.

It is very true that the modern law school of continental Europe is the successor, often the immediate successor, of a great medieval school of law. It is true also that the medieval law school had its predecessor in the law school of the Roman Empire. In both these fields there was a great development in legal education with achievements worthy of note in modern days.

The empire had at one time a host of law schools—law schools for the teaching of law, and law schools for revenue only. So many were they that they tended, as it was claimed, to impede the cause of legal education. Justinian resorted to active legislation against them, in a decree which sought to restrict the teaching of law to three schools: one at Rome, one at Constantinople, and one at Berytus, in Syria. It is somewhat as if

Congress were to close all our existing law schools excepting one in the Atlantic States, one in the middle West, and one in California. Arbitrary as this Roman decree was, is it certain that America may not need something almost as arbitrary, if our law schools continue to increase and multiply as irresponsible speculative ventures in the pursuit of the almighty dollar?

The law school at Rome fell before the western barbarians; the law school at Berytus was carried away by the Arabs to Bagdad; but the law school at Constantinople held its place until the capture of the city by the Turks in 1453. It spanned the gulf between the ancient and the medieval school of law. For, in the meantime, and before the year 1100, there arose a law school at Bologna. It was the beginning of the greatness of the University of Bologna, and remained its chiefest glory. To it came students of law from the four quarters of Europe, England not excepted. Thus there comes to Bologna about the year 1200, the Englishman, Thomas Marlborough, to complete there his study of the civil law before pleading the cause of an English church at the threshold of the apostles, and it was from the foremost member of the law faculty at Bologna in the latter end of the twelfth century, from Azo, the "master of all the masters of law," that Bracton, the author of the first organic book of English law, drew much of his inspiration.

The foremost of the medieval law schools, Bologna, was, however, only one of a very considerable number in the fourteenth, fifteenth and sixteenth centuries. As today, there were organized schools of law elsewhere in Italy, and in France, in Spain, in Holland, and in the Netherlands.

One feature of these medieval schools is especially worthy of note. In most instances, in every instance of consequence, it was a university law school. For eight hundred years, ever since the days of the Bologna school, this has been the characteristic of the teaching of law in continental Europe. In other words, law has there been looked upon, from the very beginning of our modern law, not as an art to be learned through an apprenticeship in a law office, but as a science to be studied in an organized school. The way to the law school has as a rule run

through the university. The teaching of law has been intrusted, not to private hands, not to proprietary schools of law, but only to the law faculty of a university.

As respects our indigenous law, the common law of England, there is, however, a very different story. In that famous book of the fifteenth century, the *De Laudibus Legum Angliæ*, the young Prince is represented as asking this question of the "grave knight, his father's Chancellor, and at that time in banishment with him," who is endeavoring to lead the prince away from the strenuous athletics in which he delights, to the study of the law in England:

"But my good Chancellor, I beg you to inform me why the laws of England, which as you say are so useful, so beneficial, and so desirable, are not taught in our universities, as well as the civil and the canon law, and why the degrees of *bachelor* and *doctor* are not conferred upon English lawyers, as it is usually bestowed on those who are educated in other parts of learning?"

The answer to this is not important here: It is the question itself which is suggestive, because of what it assumes, for it is very true that at this time, about the year 1450 and before this time from the very beginning of English law, and after this time, until but the other day, English law had no place in any English university, although the civil and the canon law had an established place at Oxford. Not only so, but with one exception, which I shall notice presently, the law of England was not taught, until very recently, in any organized school of law.

That this should have been so was not only contrary to the traditions of the world of letters, but it was in disregard, as it would seem, of normal conditions in our English law itself. There were three causes which apparently tended to the establishment of an organized school of English law at Westminster, if not in the universities at Oxford and Cambridge. For, in the first place, from the twelfth century down, that is through all the period of the growth and development of the medieval law school on the continent, our native system of law was steadily developing around a common center. Its nucleus was the writ system of the three superior courts, the King's Bench, the Com-

mon Pleas, and the Exchequer. In the second place, the English lawyers, like the English law, had a common center. They gathered about the permanent seat of the courts at Westminster. It was there they met for business. It was there also that they met in social intercourse and led a common life, in Lincoln's Inn, in Gray's Inn, in the Middle and the Inner Temple. It was here then, if our medieval lawyer was at all studiously inclined, and if like his contemporary, the clerk at Oxenford, he would gladly learn and gladly teach, that a school of English law should have made its appearance. And in the third place, there is abundant evidence that through all this period our English law was receiving the careful, even the laborious, attention of many studious men. However intent the law student at Bologna may have been upon the civil law, his contemporary in London was no less diligent, although in quite his own way, in the study of the law of England. We have his handiwork still with us. It was no mean intellectual effort which forged the elaborate system of the common law writs, or built up the system of equity procedure to remedy the defects in the common law. The very contortions of common law procedure bear witness to a keenly debated and scrupulously applied logic.

The studious disposition, indeed, of our early lawyer left its mark not merely on the original system of law which he framed and handed down to us, but upon this period of our early literature. In Chaucer's Prologue, it will be remembered, the clerk of Oxenford is *par excellence* the studious man among the pilgrims, a type of the student as such for all time; but next to him stands the sergeant of law as the only other reader of books in the entire company. He has, it is true, no trace of that sheer love of learning which characterizes the Oxenford clerk. There is much worldly wisdom in him. He is "wary and wise." Put to the test, he would have sacrificed no office for the twenty books of Aristotle and his philosophy which the clerk of Oxenford kept at his bed's head. But Chaucer's lawyer is a careful and exact student of the law of England. "In termes hadde he caas and domes alle, that fro the tyme of kyng William were falle. And every statute couthe he pleyn by roote."

The natural result of these causes should have been some form of organized instruction in our native law. And such was the result. The common law in England, like the civil law of Rome, had its medieval law school. But strangely enough the later development of our legal system was such that this, the normal and general, takes the appearance of an exception. In the light of the later history of our system of legal instruction English and American lawyers look upon the existence of this medieval school of common law as something abnormal or as something mythical.

Perhaps there is something mythical in it, but it may be worth while to tell the tale as it has come down to us, on the authority of Fortescue and Coke. In England, about the middle of the fifteenth century, a great school of the common law was flourishing near Westminster. It had a faculty of the ablest practitioners. It had a full curriculum. It was provided with residential halls and dormitories. It was attended daily by upwards of a thousand students. Presently it fades away and leaves no trace of its existence excepting a rule that in order to be eligible for admission to the English bar the student must have eaten a certain number of dinners at a certain place.

Traces of the existence of this medieval school of the common law, which we find only to lose again, appear here and there in the books. Pope describes it as a University of the Common Law, the peer if not the superior of any other university. At an earlier day Sir John Fortescue sang its praise. The laws of England, he declares, are not taught at Oxford or at Cambridge because they are taught in a better school. "They are studied," he says, "in a public manner and place much more commodius and proper for the purpose than any other university. It is situated near the King's palace at Westminster, where the courts of law are held, and in which the law proceedings are pleaded and argued and resolutions of the court, upon cases which arise, are given by the judges, men of gravity and years, well read and practiced in the laws, and honored with a degree peculiar to them. Here, in term time, the students of the law attend in great numbers, as it were to public schools, and are there instructed in all sorts of law learning, and in the practice of the

courts; the situation of the place, where they reside and study, is between Westminster and the city of London, which, as to all necessities and conveniences of life is the best supplied of any city or town in the Kingdom. The place of study is not in the heart of the city itself, where the great confluence and multitude of the inhabitants might disturb them in their studies; but in a private place separate and distinct by itself, in the suburbs, near to the courts of justice aforesaid, that the students, at their leisure, may daily and duly attend, with the greatest ease and convenience."

And to this school "there belong ten lesser inns and sometimes more which are called inns of chancery in each of which there are an hundred students at the least and in some of them a far greater number, though not constantly residing. The students are for the most part young men; and here they study the nature of original and judicial writs, which are the very first principles of the law of England."

All this was, no doubt, and what follows may have been. But its details suggest a Utopia, and an aspiration toward something which our system of legal education has never yet attained. "In the inns of our Chancery," says Sir John Fortescue very boldly, "there is a sort of an academy or gymnasium, where they learn singing and all kinds of music, dancing, and such other accomplishments and diversions. At other times, out of term, the greater part apply themselves to the study of law. Upon festival days and after the offices of the Church are over, they employ themselves in the study of sacred and profane history. Here everything which is good and virtuous is to be learned. All vice is discouraged and banished. The discipline is so excellent that there is scarce ever known to be any pique or difference, any bickering or disturbance among the pupils. The only way they have of punishing delinquents is by expelling them, which punishment they dread more than criminals dread imprisonment and irons. Whence it happens that there is a constant harmony among them, the greatest friendship and a general freedom of conversation."

However fanciful this passage may be, and recent criticism has questioned whether it could have come from the pen of Sir

John Fortescue, there seems no reason at all to doubt that very solid work was done, for a time, in this so-called university of English law. The students were in cap and gown, leading a life of college discipline not unlike that which now exists at Oxford or Cambridge, but perhaps on stricter lines. They dined daily in a common hall; they were required to attend chapel; they were required to be within the gates of their inns by six in the evening. Above all this our medieval school secured for its students what is the true aim of every law school, hard work in an atmosphere of legal thought. The lectures came steadily on, delivered by the most learned lawyers of the time—the “Readers,” as they were called from the monastic days. And regularly after dinner, legal questions were thrashed out in a carefully regulated system of debates—the “moots” or “bolts.” The former term, of the best old English parentage and association, still survives in the “moot courts” of our law schools. Some of the strictness of the old moots, however, has passed; a student is no longer placed in the stocks for delaying a moot. And the degree of “Mootmen,” which Lord Coke placed upon a par with the degree of Bachelor of Arts, has been quite lost to us.

In fancy also, or in aspiration, this ancient school of common law was an integral part of the only graded juridical system which our law has ever imagined. Is anything in the line of legal education more perfect in theory than the scheme which Lord Coke offers in the preface to his third report? “Now as to the degrees of law,” says he, “as there be in the universities of Cambridge and Oxford diverse degrees, Bachelors, Masters of Art, Doctors, of whom be chosen men for eminent and judicial place both in the Church and in the Ecclesiastical Courts, so in our law there be *Mootemen*. These are they that argue the Readers’ cases in the inns of chancery, both in term and in the grand vacation. Of the Mootemen, after eight years study, or thereabout are chosen the Utterbarristers. Of these are chosen the Readers in the Inns of Chancery. Of the Utterbarristers again, after twelve years standing, are chosen the Benchers. And out of these the King makes choice of his Attorney and his Solicitor General, his Attorney of the Court of Wards and Liveries, and the Attorney of the Dutchy. And of these Readers

also are the Sergeants elected by the King, who by the King's writ are called to the state of Sergeant at Law. And of the Sergeants are by the King also constituted the honorable and reverend Judges."

Such in a general way was our first school of the common law. With all its merits, however, it fell into an early decay. The causes are not now easy to define. One cause assigned by high authority was the fact that the professors of law, being engaged in active practice, found themselves unable to get time for their lectures in the law school. Another was possibly the fact that the senior Inns of Court, Lincoln's Inn, Gray's Inn, and the two Temples, set the seal of their disapproval upon the Inns of Chancery, because the latter were open not only to men preparing as barristers but also to those preparing as attorneys. And possibly the expense of the formal dinners which it became the fashion of the Readers to give to Royalty and the Bar deterred all but the most successful practitioners from holding a place on the faculty of the school. Whatever the causes, lectures and classes appear to have been discontinued by the year 1600, and Lord Bacon, whose mind ran ever toward schemes of improvement, is then suggesting the foundations of a university in London for the purpose, as he phrases it, of imparting legal knowledge and fitting men for public life.

The Inns of Chancery drifted away to merely secular uses or were sold to the highest lay bidder. The memory of their great purpose, however, still remains; and the historic setting of our first school of law, is pictured in the opening verses of the *Fairie Queene*:

—"those bricky towers
The which on Themmes brode aged back doe ride;
Where now the studious lawyers have their bowers,
There whilom wont the Templar Knights to bide,
Till they decayed through pride."

Very different is the setting of the next school which essays to teach the law of England: the broad street of a New England village, on one side, within the shadows of the trees, a colonial dwelling house, and hard by a small, one-story, wooden building. There was nothing about the latter which would at-

tract the eye. Its like can be seen in many an American village, an unpretentious frame building, erected to serve for the time being the needs of a country lawyer who wishes to have his office separate from but under the eaves of his dwelling house. Yet this humble building holds a high place in the regard of American lawyers, as the birth place of the American law school. As such it marks the fountain head of that new movement towards the scientific education of lawyers which has already done so much for our law and the practice of it, and will do so much more.

Between this little school at Litchfield, Connecticut, and the so called University of Law at Westminster, there is an interval of some three hundred years. Throughout this period the student of English law got his legal education as best he could. Very often he got none that was worth an effort, but learned the elements of English law after he reached the bar, his clients paying the tuition. Frequently, however, he sought instruction in some law office. Sometimes he paid for this in money. Sometimes he got it for his clerical services in the office. In England a fee of one hundred guineas was expected. In Massachusetts one hundred dollars appears to have been paid in some offices.

So common was this office instruction in America that until a recent day the biographer of an eminent lawyer rarely failed to mention, as one of the important facts in his life, the individual lawyer with whom he studied law. In many respects it was an excellent way. In some respects there is no better way of learning law. It was, indeed, the historic principle of the disciple and his Master. But for its success three things were necessary—three at least. The eminent practitioner must have some leisure, some aptitude for teaching, and a grasp upon and a fair knowledge of the whole law of the land. Very often the system broke down in one or another of these respects. And with all its excellence, its main tendency was unfortunate. It tended to teach law as an art rather than a science, as blacksmithing is taught, or watchmaking. Principles were lost sight of in the search for precedents. Too often when the practitioner did find time to instruct, both the instructor and pupils were narrowed in their ideas through a common ignorance of any legal system

other than that of their own office, and through the absence of that inspiration for work which comes from united effort.

The humble Litchfield school with its fifty students stands historically at the head of an array of one hundred and twenty schools and twenty thousand students. But the Litchfield school, as it turned out, did not foreshadow what was to be the prevailing type of the American law school. It typified rather that numerous class of law schools which are conducted wholly by men in active practice, amid the abstractions of the law office. Beyond this, however, and as a later development with us, as on the continent of Europe, has come the university law school properly so called. Its beginning in America upon any enduring basis was in the year 1817, with the creation of the Royall professorship of law at Harvard.

With the opening of the Harvard school our system of legal education entered upon the third stage of its development. At the outset we have the law office apprenticeship. Then come the schools typified by the school at Westminster in the fifteenth century, by the school at Litchfield, Conn., in the eighteenth century. There is an organized school, fairly well equipped with a teaching force, numbering indeed not infrequently a faculty of able practitioners in the state, provided sometimes with a fair library, possessing now and then a color of endowment. Judged by their fruits these schools deserve high praise. Excellent lawyers have come out of them. But it is to be remembered that the fields of English law are wonderfully fertile. Almost any plowing will produce an abundant harvest. There is indeed one very manifest advantage found in these schools, in that the law student is brought into touch, although not into very close touch, with the active practitioners, and often with the leaders of the bar. It is an advantage which the schools of this class are not slow to recognize and insist upon. "All the professors in our faculty," reads the catalogue of one of our law schools, "are lawyers actively engaged in the practice of their profession. They come to the class room direct from the bar, bringing with them fresh experiences and the spirit of actual contest." But every such school is always in greater or less subordination to the demands of the law offices of its instructors. It lives and

moves and has it being not as a primary thing in itself, but as the adjunct of the law office. It has as yet acquired no distinctive name. We are only beginning to recognize it as of a class to itself. But the present development of legal education requires that this class of school shall be sharply distinguished. For lack of a better name, it may be known as the *schola adjunctiva*.

In this country the *schola adjunctiva* is most active at night. Sometimes it may be found abroad in the full light of day. Now and then it is active both night and day. It proceeds upon the principle that every man and all boys can serve two masters.

The *schola adjunctiva* is not unknown in the history of other legal systems. The Roman Empire knew it well, as the earlier empire had also known the first stage of law instruction, that of legal apprenticeship.

All these three stages now exist with us side by side, so heterogeneous is our system of legal education. But everywhere else, in Christendom the first two stages have proved stages of transition only. Everywhere else the final stage has been that of the university law school. The signs of the time with us all point to something like the same result in America and in England. In the great prestige which the university law schools have already won, in the multitude of students flocking to them in spite of their heavy tuition, in the excellence of their work, in their spirit of enthusiasm, in their splendid law buildings, and growing endowments, in these and in other things are foreshadowed the day when the university school of law will be almost the only school of law recognized in this country. Already it dominates our legal system.

With the rise of the university law school in this country we appear to have attained the point at which, it might seem, our legal education should have begun. "Why," asks the Prince of the De Laudibus, about the year 1450, "why is it that English law is not taught in the English universities, as the civil law is taught in the universities of the continent?" The university school for teaching English law was indeed to come, but it was to come in its own way and in its own time. Our system of law owes no small debt to the civil law of Rome, but ours has never

been an imitative system of law. It is rather a curious thing that here, even in its method of teaching law, as so often in other respects, our native system of law refusing to imitate has worked out for itself, in the slow process of centuries, a result which in its essentials is close to, and yet to be distinguished from, the results attained under the civil law of Rome.

But what are the characteristics of this new native growth, the American university school of law? The subject is too wide for my time, but certain main aspects may be noted. At the university law school, as developed with us, these three things are in general very noticeable. In the first place it is in touch with the academic life of a university. More and more the path to the law school runs through the university. Striking instances of this tendency to put the law school within the shadow of the academic university are to be seen in the history of the Columbia Law School, and in the Law School of the University of Pennsylvania. Both were for many years down town schools in great cities. Both have been moved far out to the side of the academic buildings of a university. In both instances the results have surpassed the most sanguine expectations of those who urged the change, in the increase of the number of the students and in the approved character of the work done in the law school.

In the second place the modern law school shows a wonderful development in material equipment. It insists upon its own building, devoted exclusively to its uses. We are approaching the time when a law school will think a half million dollars scarcely adequate for the construction of its building.

The cost of its building, however, is only one of the two chief items in the material equipment of the modern law school. Law is a science to be learned out of books. Before opening its doors to its first student the law school of the University of Chicago thought it necessary to spend fifty thousand dollars for the beginnings of a library.

But the body is more than the meat which nourishes it; the soul is greater than the body which clothes it. And it is to the credit of the men who are at the head of the new movement in legal education in this country that the great law buildings which

they are erecting, and the great law libraries which they are collecting, are erected and collected as means toward an end—and that end not so much the imparting of knowledge, but the education of the American youth in the science of our law. As to what is involved in this—*the education* of the American youth in the *science* of our law—that is too long a story.

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